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ABSTRACT

This paper discusses copyright laws in Hong Kong, and how they are an impediment to self-access learning centers. Most of the published materials needed for use in self-access centers are not suitable without some adaptation. Such adaptations often involve photocopying parts of a book or the whole thing. In addition, it is often felt that it is unsafe to put original audio and video tapes in the hands of users, so, consequently, safety copies (or backups) are commonly used. Copyright law in Hong Kong does not offer any privileges to educational establishments. As far as self-access centers are involved, copyright law does not appear to permit photocopying at all, nor allow copying of audio or video cassettes. There is discussion about an agreement between publishers and materials developers on how to deal with this problem. Such an agreement would allow easier development and adaptation of published material for genuine self access. The draft of a copyright agreement proposal is appended. (JL)

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Copyright, Publishers and Self-Access Centres in Hong Kong

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Introduction

Copyright laws in Hong Kong are getting in the way of being able to do a good job in running a self-access centre. At least, that's the way it seems at times. Despite the claims made in many publishers' catalogues, most published material is not suitable for genuine self-access learning without at least some adaptation. Such adaptations often seem to involve photocopying parts of a book or sometimes the whole thing. In addition, it is often felt that it is unsafe to put original audio and video tapes in the hands of users, consequently safety copies (or backups) are commonly used.

As soon as we start to copy materials we are getting into the area of infringement of copyright. This is a serious legal issue which those of us involved with self-access centres (and indeed all colleagues) should be wary of. It is interesting to note that not everyone is of this opinion. Frequently we hear teachers claiming "It's OK because it's for educational purposes." or "Surely it's OK to keep copies of videos for a certain period of time." or "No problem, you're allowed to copy x% of a book.".(Insert your own figure for 'x' because different would-be-experts put it at anywhere between 1% and 25%.) Hazy statements like these indicate the biggest problem, namely that the situation is unclear but somehow we feel it ought to be all right for us to copy materials for educational purposes.

As self-access learning takes on an increasingly important role in Hong Kong, the profile of self-access centres is being raised. The self-access facilities of Hong Kong University receive a constant stream of visitors, both local and international. As other self-access centres are established and mature they will be subjected to the same public interest. If these centres are to become part of the public image of the institutions to which they belong, it is important, for the institutions as well as the operators, that they are seen to be operating legally. It is significant in this context to note that educational libraries throughout Hong Kong are meticulously careful to remain within the constraints of the copyright law. Levels of funding are a major criterion in achieving a clean image. If institutions are committed to this new approach to learning they must fund it adequately. Teachers involved in self-access should not allow themselves, through lack of institutional commitment, to be pushed into high profile unprofessional and illegal behaviour.

Copyright law in Hong Kong[1] is quite clear on most issues and with a few minor exceptions does not offer any privileges to educational establishments. As far as the needs of a self-access centre are concerned it does not appear to allow any photocopying at all, nor does it allow copying of audio or video cassettes, not even for backup purposes, although some publishers make special agreements which relax the restrictions on making safety copies of audio tapes. Copyright concerning off-air recording of broadcasts is a little less clear. This is perhaps because when the current Hong Kong law was made neither audio cassette recorders nor video recorders were commonly available. As such recordings are not of general concern to publishers we will not deal with them here.

We will see that while specific agreements have had some success they are very time-consuming to arrive at. A more useful goal would be to create a general agreement applicable to all self-access operators in Hong Kong.

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Signs of improvement

The picture painted so far seems rather gloomy but in fact the situation is slowly improving and there are definite signs of hope for a more rosy future. The Publishers' Association of the UK has made a statement allowing certain kinds of safety copying. This only refers to materials published by the signatories of that statement and is probably only applicable in Hong Kong if a publisher's local representative specifically extends the agreement to include us. Most typically, publishers will agree to anything that has been covered by the UK Publishers' Association agreement. Areas that fall outside the agreement are much more difficult to deal with. The concessions currently on offer may be somewhat limited but they are a step in the right direction. There are also a few brave exceptions to the conservative band of publishers who have gone further to accommodate the needs of self-access.

Developers' concerns

The areas currently of most concern to operators of self-access centres in Hong Kong are the cutting up, reassembly and adaptation of print material; the making of safety copies of audio and video tapes; and the splitting of audio and video tapes into user-manageable chunks, for example by unit or by exercise. Audio and video splits are achieved by copying each chunk onto a separate tape. The original tape becomes the safety copy and the splits are given to the users.

The first of these concerns arises from the need to turn good teaching text into effective independent learning material. There is a wealth of good published material but little of it is ideal for self-access. Chopping it into chunks is a good first move; adding suggestions for use and answer sheets is even better. Both Dickinson (1987) and Sheerin (1989; 1991) advocate this method. They also claim that cutting up a publication does not infringe its copyright. While this may be true for the UK (from where they both write), it appears less certain for Hong Kong, which is still operating under an earlier copyright law[2]. However, publishers seem happy enough to grant permission for cutting and pasting (but not photocopying) their printed materials. Securing an agreement to do this seems the obvious and safe thing to do.

The second concern, that of making safety copies of tapes, is a difficult issue. The law does not allow for any copying. The UK Publishers' Association accepts the making of one safety copy of audio tapes but expressly forbids any copying of videos. It is still unclear whether this acceptance extends automatically to Hong Kong. What is clear is that it only covers tapes from the publishers who are signatories to that agreement.

The third area of concern is similar to the second. Splitting audio tapes into user-manageable chunks is permitted by some publishers but splitting of video is not, unless special agreements are reached.

Specific agreements

Although there are clear signs of improvement in the relationship between publishers and developers it is difficult to know exactly where Hong Kong self-access centres stand. What seems to be happening at the moment is that individuals who wish to develop or adapt particular materials are making agreements with publishers which are specific to those materials. These agreements allow existing published material to be quite extensively adapted for use in a specific self-access setting. A brief description of two good local examples of this will show how it is worth pursuing the thorny issue of copyright agreements.

An agreement was secured with Barbara Clarke (representing BBC English) during a project

to adapt 'Television English' for self-access use. The agreement allowed us to cut up the books and rearrange them as worksheets (adding comments, suggestions and instructions as necessary) and to make video splits. It was also agreed that further copies of each split tape (but not the worksheets) could be made on payment of a fee proportionate to the cost of the package.

We started with a useful supplementary classroom package comprising six books and two video tapes. We finished with thirty-four individual worksheets with accompanying video tapes, each adapted for individual study by one or more learners. In addition, we have since identified one unit which is heavily used and we will be able to make extra copies at only minimal cost to the English Centre.

Another example of benefiting from specific adaptation agreements comes from the English Language Unit at Chinese University where Emma Poon is working with Annette Abbott (representing Cambridge University Press). In this case agreement has been made for audio tape splits, the cutting up and rearrangement of text into worksheets and the addition of rubrics. Interestingly, this agreement draws the line at rewriting of text without further consultation.

One of the problems with such specific agreements is that they can take a dishearteningly long time to finalise. However, a greater problem is that these agreements are so specific. They cannot necessarily be generalised to other publications from the same publisher and certainly not to works from other publishers. They cannot even be read as a green light for all institutions to make the same adaptation, although once an agreement has been reached it could be used by another institution as a basis for discussion with the publisher. The essential nature of these agreements is that of an understanding between two specific groups of people regarding a specific task.

A general agreement

It seems that the way forward in this area is to construct a general agreement that meets the needs of both publishers and self-access developers. Such a move would prevent the distressingly slow process of arriving at agreements for each development project. It would also enable all signatory institutions to develop materials published by the signatory publishers within the agreed constraints. Of course, the option of making special agreements for special occasions would still be open to all developers. It is also important to point out the advantages for publishers. They would know what developers are doing with their material, which is certainly not always the case now. They may also discover that new items for publication arise from the adaptations (to be published in agreement with the adaptors). Most importantly, signing an agreement and thereby showing trust in educators would help allay much of the suspicion and distrust with which publishers are regarded locally.

The idea of producing a general agreement was first suggested to the Hong Kong Association for Self-access Learning Development[3] at a meeting (Feb. 1993) held to explore the copyright situation as it affects self-access operators in Hong Kong. This meeting lent its support to the idea and as a result an agreement is currently going through a series of redrafts (see Appendix). Comments on the proposed agreement have been received from a number of educators and publishers' representatives. Although many comments have been positive it would seem that there are two possible stumbling blocks. From the publishers' side indications are that not all publishing houses will be ready to agree to the making of backup copies of video tapes or to allowing video splits. From the educators' side there may be some concern about undertaking to remain within the agreement for all materials.

It is hard to see why publishers are worried about backup or splits for video when they are mostly willing to allow this for audio tapes. Indeed, the UK Publishers' agreement specifically allows safety copies of audio tapes to be made. It is difficult to understand where the difference lies between making backups for audio tapes and doing the same for video tapes. It is hoped that further discussion on this issue may prove fruitful.

BEST COPY AVAILABLE

The educators' concerns are less justified (in a legal sense) but more difficult to deal with. Once representatives of self-access centres have signed this agreement they will be committing that centre to behaving legally, that is, within the constraints of the agreement, with regard to all materials belonging to any of the signatory publishers. At first glance this may seem to be a non-issue; surely we are all obliged to behave legally, with or without an agreement, towards any published material? However, it will come as no surprise to many educators to hear that there are many instances throughout Hong Kong of illegal photocopying and tape copying. One of the purposes of the proposed agreement is to allow self-access educators to get the best deal for their centres; however, we have to be realistic and realise that there will never be an agreement which allows large scale copying. That would deprive publishers of revenue and would hold no attraction for them.

Conclusion

There are still a number of hurdles in the way of a final agreement; however, the benefits to be gained are worth the struggle. It is hoped that the final outcome will be an agreement acceptable to all self-access educators in Hong Kong and as wide a range of publishers as possible[4]. The result will be to allow easier development and adaptation of published material for genuine self-access use including the splitting of audio/visual media into more easily accessible chunks. It will also allow the making of safety copies of all audio and video materials which are to be placed in users' hands.

Notes

1. The copyright situation in Hong Kong is governed by The United Kingdom Copyright Act 1953 (introduced in Hong Kong in 1972) and The Hong Kong Copyright Ordinance 1973. As a dependent territory of the United Kingdom Hong Kong is also subject to The Paris Convention for the Protection of Industrial Property, The Berne Copyright Union and The Universal Copyright Convention.

2. The United Kingdom operates under The Copyright, Designs and Patents Act 1988 which is substantially different from the 1953 Act current in Hong Kong, particularly in the provisions it makes for educational users.

3. HASALD has a membership representing self-access interests in secondary and tertiary education, training in the commercial sectors and publishing.

4. Comments on the proposed agreement from anyone falling within either of these categories would be welcomed by the author, c/o the editors.

References

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Appendix

*DRAFT

Proposal for a Copyright Agreement

The following items all seek agreement for use of published materials for self-access learning within Hong Kong. They do not relate to classroom use of materials.

Print Materials:

Works published by the signatories of this agreement may be physically cut-up and re-assembled in any way that seems appropriate providing that the works or parts of them are not then re-sold and providing that this process does not involve photocopying of the original material.

Each item that is separated from the original work, and thence the copyright page, must carry a copyright line which acknowledges author, title, publisher and date of publication. This line can be as small as is readable.

It is permissible to add rubrics and commentaries to the reassembled original work.

Any changes to the original text or other printed items must be agreed by the publisher concerned.

Worksheets produced using any or all of the above methods may be laminated.

Worksheets containing items from disassembled published material may NOT be photocopied.

Audio and Video Material:

It is permissible to make a copy of an audio or video tape, keeping the original as a back-up. Only one copy may exist at any one time.

In making the one permissible copy it is permissible to copy different parts of the original tape onto different cassettes, providing that no part of the original exists in more than one copy at any one time.

Where a tape is divided into clearly identifiable units, up to three further copies of a unit may be made for a fee which is to be negotiated with the publisher. The fee will be based on the proportionate cost of one unit.

In the case of any copying each cassette should be clearly marked with the original copyright message, in audio/video form on the tape and in print form on the container.

Prohibitions:
Neither the whole nor any part of a published work shall be photocopied as a means of providing self-access materials without express permission from the publisher.

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